THE GOVERNOR'S COMMISSION ON THE REDUCTION OF AUTOMOBILE INSURANCE RATES IN BALTIMORE CITY

AN ALTERNATIVE REPORT

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I. INTRODUCTION

This Commission was appointed to determine why some Baltimore City residents are paying inordinate amounts for automobile insurance when compared to the surrounding suburban areas (indeed, some areas within the City itself); and to make recommendations to alleviate the heavy burden those rates are inflicting upon those largely poor and black neighborhoods of the inner City.

As to the **why**, it is apparent, as even the chairman's report concedes, that the use of zip codes to establish geographic territories for rating purposes, has greatly exacerbated an already serious problem existing in the City, creating not only an affordability problem but availability problem as well. Private insurers have essentially abandoned certain areas of the City to MAIF, regardless of the personal responsibility and the clean records of those individual insureds living in those areas.

It is precisely those otherwise standard policy risks who, **but for their address**, should be eligible for the same affordable rates as the rest of the Baltimore Metropolitan Area, for whom our

efforts should have been directed. It is because we have not done so, that I felt compelled to write a separate, or alternative report.

II. TERRITORIAL RATING BY ZIP CODES IS UNFAIR

The chairman's report assumes that territorial rating is legal as long as it is based on some objective criteria. The only objective criteria used by insurers, however, is loss costs or the amount paid out in claims against policies on vehicles garaged in the territory. By definition then, drivers who cause accidents either inside or outside those territories set the difference in base rates or pure premium for everyone else within that rating territory. A good driver may get a discount on that base rate; but no matter how conscientious and responsible a driver, no matter how clean the driving record, they cannot -- short of moving out -- get away from the base territorial rate established by the insurer for their neighborhood. And they have moved out in droves, either actually if they can afford it or by registering the vehicle at another address.

It does not take a rocket scientist to realize that geographical distinctions, based purely on **loss cost** without first establishing (as originally contemplated) population density, traffic congestion and other physical characteristics applicable to a territory large enough to encompass the natural day-to-day driving habits of its residents, is utterly without foundation and subject to great abuse. The insurance industry has not only failed over the years to enlarge the rating territory used for Baltimore City to include the immediate surrounding metropolitan area suburbs whose residents are for the most part daily commuters; but has instead reduced those rating areas within the City to **zip codes**, thereby giving relief to some of the better neighborhoods of the City while raising base rates or **pure premiums** through the roof in others.

III. MAIF HAS UNINTENTIONALLY COMPOUNDED THE PROBLEM

MAIF was introduced in 1972 to take over **assigned risks** from private insurers for two basic reasons: (1) due to the mandatory nature of some coverages, insurance must be made available for

those drivers who cannot be placed in the private insurance market; and (2) because bad drivers should not be forced into the private system which inevitably increases rates for good drivers. Unfortunately, because of MAIF's existence, private insurers have not only been able to get rid of bad drivers, but entire areas of the inner City including the good drivers within those areas, through the simple expedience of using smaller territorial rating units (or zip codes) within the City.

A symbiotic relationship has developed between MAIF and the private insurance companies. MAIF bases its rates on loss costs for the City as a whole. This ensures a rate for non-standard drivers which, while high, is not so confiscatory as to be in conflict with its primary purpose of assuring availability of legally mandated automobile insurance. If on the other hand, MAIF, like private insurers, used zip codes, the rate would be so high in the inner City that its survival politically would be put in play; and the industry's old nemesis assigned risk would almost certainly resurface. Indeed, this was one of the early proposals of House

Bill 923.

In using zip codes, private insurers also assisted in keeping MAIF's non-standard rates down by essentially turning over the total market (good and bad drivers) in those inner-City areas. Because their loss costs were so exaggerated in these smaller territories, the typical premium charged for a standard policy offered by private insurers exceeded the cheapest non-standard premium offered by MAIF. So, in Baltimore City, we have the unintended consequence of good drivers subsidizing bad drivers in order to maintain some allusion of affordable rates for mandated coverages and to discourage an unacceptable surge in uninsured motorists.

This, in my opinion, is why we are here. It is almost certainly why Mayor Schmoke and a largely poor and black inner-City constituency affected by this gerrymandering of rating territories, has asked the Governor to establish this Commission. And it deserves to be addressed frankly and honestly regardless of the political realities which supposedly argue against it. The point,

as I see it, is not whether the practice is legal, but whether it is right. And we have, I believe, ignored that issue entirely.

IV. FINDINGS OF THE CHAIRMAN'S REPORT AS TO THE SOURCE OF THE PROBLEM IN BALTIMORE CITY IS UNSUPPORTED BY THE DATA PRESENTED

In order to deflect attention from territorial issues and the strong suggestion of redlining inner-city neighborhoods, insurers inundated the Commission with a blizzard of industry studies blaming high premiums on the high frequency of claims and over utilization of health providers in the City, particularly in soft tissue injury cases which, because of the lack of any objective findings (i.e. broken bones), are easily faked. However, these studies just don't support that conclusion.

First of all, on the macro level, the industry (as well as the chairman's report) relied heavily on a Rand Institute study comparing the ratio of so-called hard versus soft injury claims of all states to Michigan and New York. The premise being that in states such as Michigan and New York, who have verbal no-fault, neither the filing nor padding of false claims is likely since you

can only get your out-of-pocket costs. Pain and suffering or general damages are not allowed. In both states that ratio was .7 (i.e., 7 soft for every 10 hard injury claims) versus a ratio of 2.0 or twice as many soft injury as hard injury claims in Maryland.

This was a real surprise, not because Maryland's ratio was so high but because it was so low. Another study by the IRC had already indicated that the ratio of soft to hard injury claims nationally was 5 to 1. So where are these statistics coming from? Whatever the reason for the discrepancy (and none was ever offered), the study is clearly in error.[1]

Next at the local level, the insurance industry sought to show that the driving force behind premium increases throughout the State and Baltimore City was the substantial increase of the number of claims, and particularly third-party personal injury and PIP claims relative to property damage claims. Those studies also find a direct correlation between frequency of claims and the percentage

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[1] Auto Injuries: Claiming Behavior and its Impact on Insurance Costs, Insurance Research Council, September 1994, page 20

of attorney involvement. The City has a higher attorney involvement than the suburban Baltimore area (89% vs. 78%), explaining, so the argument goes, the almost 50% greater number of personal injury claims in the City. Moreover, again according to the industry, attorneys and health care providers have **gamed** the system using PIP benefits to inflate medical specials which in turn directly increase the non-economic damage portion of any settlement.

First of all, according to Exhibit 3 of the chairman's report, the frequency ratio of both personal injury and PIP claims per registered vehicle in the City versus the suburbs is 3 to 2 (i.e., 3 claims in the City for every 2 in the counties), there are also according to most recently available information from the Motor Vehicle Administration approximately 50% more licensed drivers per registered vehicle in the City (and many times that in some inner-City areas) than in the suburbs. Fifty percent more drivers equal a statistical probability of 50% more claims, but since loss costs are divided by the number of garaged vehicles within a territory

and not licensed drivers, it gives the impression the City's claim frequency ratio is out of line.[2] Secondly, **over utilization** of benefits is equally specious since severity (or amount paid per claim) is admittedly less in the City than in the suburbs.

So why has the chairman bought into these studies? Most likely for two reasons: (1) having rejected territorial for any meaningful or serious consideration, there is no where else to go; and (2) whether one buys into the industry's claim that inner-City claimants, attorneys and health providers are **gaming** the system, no one disputes that 75% of the average personal injury claim's economic loss are medical costs, and these costs have consistently out paced overall inflation including automobile insurance premiums

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[2] In any case, it is not the frequency or propensity of insureds to assert third-party claims that results in loss costs being charged back to the particular territory. The propensity to make a claim then, can only be shown as having a statistical correlation to increased premiums with regard to first-party claims. Again, Exhibit 3 to the majority report shows the same 3-to-2 ratio, or 50% more PIP claims being filed by City claimants than in the suburbs as is the case with third-party personal injury claims. This almost identical increase in both the number of claims brought against, as on behalf of, City residents strongly suggests that any increase in claim frequency is due to factors other than **gaming** the system such as already indicated the number of licensed drivers per registered vehicle.

over the last 15 years. So the chairman's report, whether unable or unwilling to deal with the peculiar problems of some Baltimore City residents in obtaining affordable automobile insurance rates, is now recommending a complete overhaul of the system state-wide by a combined elimination of mandatory protections, cost shifting and tort reform which it hopes will reduce premiums across the State by 20%.

V. THE RECOMMENDATIONS OF THE CHAIRMAN'S REPORT MAY WELL PRODUCE SOME REDUCTION IN PREMIUMS BUT CLEARLY NOT ENOUGH TO MEET ITS GOAL OR JUSTIFY THE MAJOR CHANGES CONTEMPLATED TO THE PRESENT OVERALL HEALTH CARE DELIVERY SYSTEMS

The centerpiece of the chairman's recommendations for lowering the cost of automobile insurance throughout the State, is the virtual elimination of PIP and tying medical payments to Medicare fee schedules for both first-party and third-party claims.

PIP has for all practical purposes been eliminated because pricing in the City makes it unaffordable; and for those who have a health plan, it is unnecessary. This is unfortunate since PIP coverage is relatively cheap everywhere else except for those same inner-City areas we are seeking to help. Indeed, according to the

chairman's report's Exhibit 1, PIP in Baltimore City can represent as much as 25% of the premium for MAIF insureds or over $400.00 per year. Obviously, if PIP is completely optional, it is not going to be purchased by the typical inner-City resident who is also the most likely to be without health or disability insurance. The public health system, Medicaid and other public assistance programs will have to fill the void but at considerable expense to the taxpayers of the entire State. At least under the present system, mandatory PIP benefits took some of the financial burden off an already stressed health care system and had the distinct advantage of being paid for by the individual insureds themselves.

Indeed, this is one of the more intriguing inconsistencies of the chairman's report; namely why, in view of the oft-stated position that nothing should be done for City residents which would increase the burden in other areas of the State, the Commission recommends such drastic change not only in coverage, but how benefits will be delivered, **throughout the State.** Under these proposals,

not only will the insured's choice of medical treatment be seriously curtailed under the managed care or P.P.O. recommendation of the majority report, but limiting payments to Medicare schedules will amount to a 45% deductible or underpayment of the **fair and reasonable** charges for those treatments. The average charge for full medical coverage under PIP outside the City is $40.00 per year. Why would anyone outside the City want to give that up in order to lower rates for **some** inner-city residents in Baltimore. Indeed, why would anyone outside of Baltimore City want to accept any of these direct and indirect burdens and costs being forced upon them by the limitation and/or restriction of present coverages for the vague promise that automobile insurance rates at least, will be reduced in the future by 20%.[3]

To achieve this, the Commission not only seeks to shift first-party medical cost (PIP) to the health care system (both public and

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[3]Comments from insurers have already warned the Chairman of the inadvisability of setting such a large target in the Report due to their belief that the recommendations may not produce that kind of reduction in premiums.

private), but to limit payments to health care providers under both first-party and third-party liability coverage to the fee schedule for Medicare. This is a major shifting of medical costs from the automobile insurance industry to an already stressed health care system.

It was done in Pennsylvania with some success, to abate, according to the Rand Report, one of the highest over utilization of medical care in automobile insurance claims in the country. A report of the Budget & Taxation Committee of the Pennsylvania Legislature attributes one-half of the 5.7% average reduction in automobile insurance premiums in that State from 1989 to 1991 to the change. The question here is whether it is worth it, considering obvious differences between Maryland and Pennsylvania and the likely impact on employers and employees who are already dealing with the impact of dramatic increases in the costs of health insurance. The average automobile premium in Maryland may well be high at $750.00 per year, but health insurance can easily cost that bi-monthly.

First of all, Pennsylvania's PIP was $10,000.00 not $2,500.00. Secondly, it was and is mandatory. Thirdly, Pennsylvania's over utilization of medical benefits was the worst of any tort state in the country. Maryland's savings in medical costs, on the other hand, is certain to be no more than one-quarter of Pennsylvania's; and the recommended optional nature of PIP here, will have the desired breaking action on any alleged over utilization (as, indeed, it has in Baltimore City) by increasing the premium to the point where no one will purchase it.[4]

On the other hand, tinkering with anything that increases the burden on health care providers and insurers should have sure and certain benefits. For instance, one of the problems pointed out by the Pennsylvania Study is that while most health care providers can and do increase charges to other sources to make up the shortfall, increasingly that shortfall is being borne by employers through the

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[4]MAIF testified that 65% of its policyholders had waived the optional part of PIP since the 1989 change in the law. However, none of the insurers answered the Chairman's written request to show how that partial elimination of mandatory PIP affected loss costs relative to 1989 levels.

payment of health insurance premiums for its own employees. Strong public policy considerations over the last decade have stressed a more favorable climate in the state for business. Increasing the burden on present and perspective employers in the state certainly runs contrary to that philosophy; and must be carefully weighed against a possible reduction in automobile insurance premiums of 1 or 2%.

What makes this all the more absurd is that according to a recent NAIC Report (see attached Exhibit 1), Maryland as a whole has one of the lowest loss cost ratios to premiums charged in the country. Maryland ranks 48th. Only two other states had lower loss cost ratios in 1992 (the last year statistics were available) down from a ranking of 22nd in the country only 5 years before in 1987. This is an impressive ranking considering Maryland's population density. I believe the appropriate expression is "if it ain't broke, don't fix it"; conversely, if something is obviously creating isolated pockets or inefficiencies in the system, deal

with it at the source.

VI. OTHER RECOMMENDATIONS

In addition to the centerpiece recommendation to shift medical cost to health care providers and insurers, the chairman's report makes a number of other recommendations which while not seriously intended to save vast sums in costs to the system, will definitely enhance the industry's negotiating strength or bargaining power over claimants and insureds.

One of the industry's favorites is the elimination of the collateral source rule. This rule only bars testimony in a court trial with regard to other sources of payment for the same damages (i.e., medical costs) being sought against the defendant in that particular case. The theory being (up to now) that if a plaintiff had the foresight to pay for additional coverage, it is he or she, and not the defendant or the one who caused the accident, who should get the benefit.

Indeed, testimony was received by the Commission that health insurance as well as health providers always put a lien in any case

involving third-party claims. Moreover, payments from any employer-sponsored health plan, for Medicare or Medicaid must be reimbursed whether the lien has been affirmatively asserted in writing or not; and if not reimbursed, the attorney in the case is legally responsible. Realistically PIP is the only collateral source for which this recommendation would apply, and it makes little sense to do it.

The purpose of the Commission is to reduce automobile insurance premiums in Baltimore City. If PIP has become unaffordable in the City, making it optional will eliminate that burden. If on the other hand PIP is seen as seed money in gaming the system by some unscrupulous claimants, attorneys and health providers in Baltimore City, the incentive is gone since most (if not all) will waive PIP coverage in those territories where premiums have inflated to unaffordable levels.

The collateral source rule is an exclusionary rule of evidence which applies to trials. It does not apply to the settlement of claims. Anything can and will be considered in arriving at a

proper settlement of a case, including the tremendous expense of going to trial. That is why only 1% of all claims go to trial. Indeed, 90% of all automobile tort cases are settled for under $5,000.00. At those levels, the bargaining power is certainly with the insurance companies. Any additional threat over and above the prospect of going to court is overkill. Moreover, it makes no sense to deprive those 1% of all claimants who wind up in court to forfeit benefits they paid for to a liability carrier whose insured not only did not pay but **caused the injury**. More importantly, this 1% is neither the source nor answer to the ills allegedly plaguing the system and for which this Commission was formed.

Similarly the idea of Peer Review Organizations being established to determine **medical necessity** issues is absurd. First of all, insurers already have accountability measures available to them. There is no need then to establish yet another layer of medical bureaucracy to give the appearance of independence and legislative legitimacy to something that is bought and paid for by insurers. Moreover this one may well cost more than it saves

insurers. And if it operated as conceived in Pennsylvania, would cost the Insurance Commissioner's budget to increase substantially to undertake the required yearly audits. If we are going to audit anyone, it should be the insurers!

Finally, there is the one recommendation thrown in at the very last minute concerning the insurer's right to rescind the policy if, after the loss has already occurred, they can demonstrate that some fact in the original application was misrepresented (not even fraudulently), and with the benefit of 20-20 hindsight, they determine would have caused them to reject the application for insurance in the first place, regardless of policy term or length of continuous coverage for that insured.

Do we really trust this self-serving exercise to work? Insurers can already get out of contracts for <u>fraudulent</u> misrepresentations, determined by the courts based on legally objective standards. What they want here is a <u>non-intentional</u> standard based on their subjective appraisal after the fact. It is an open-ended, pre-emptory strike intended to force first and

third-party claimants to initiate legal proceedings, walk away or settle for nothing. It is also a trap for the unsophisticated and unwary.

VII. CONCLUDING REMARKS

In the best tradition of those believing the best defense is a good offensive, the insurance industry has mounted a particularly vicious attack on inner-City claimants, attorneys and health care providers. Premiums in the inner-City, we are told, are driven by non-existent injuries (i.e., soft tissue injuries), aggressively pursued by attorneys and over treated by doctors.

Well, their own statistics (and there are no other kind) do not bear this out. But no matter, they have once again successfully avoided any serious investigation into the real causes of this Commission's charge; namely to determine why automobile insurance premiums in Baltimore City (particularly the poor inner-City neighborhoods) are so out of line with the rest of the Baltimore Metropolitan Area.

A quick look at Motor Vehicle Administration statistics shows that Baltimore City has a 3-to-2 ratio of drivers to registered vehicles versus the suburban metropolitan areas. This is, not coincidentally, the same ratio of personal injury claims between the City and its suburbs. Yet the disparity between premiums between some areas of the City and its suburban cousins is not just a 1/3 more but rather as much as 4 times greater for the same coverages. Why? The answer, in large part, is a serious tightening of the territorial screws by insurers so that in some areas of the City, the question is not just affordability but availability. Again, not coincidentally, those areas are also the poorest black areas of the City. And just as Governor Schaefer before him heard the desperate pleas of a mostly middle class white constituency, Mayor Schmoke is now hearing a far more urgent plea from his own inner city black constituency because the price of near-parity with the county (premium-wise) for the **better** neighborhoods of the City, was to ratchet down territorial rating areas into zip codes, where in poorer black areas of the inner-

City, the number of licensed and non-licensed drivers versus the already small number of registered vehicles approaches 3 to 1; and the loss costs per vehicle from a relatively small number of accidents can and do send premiums through the roof.

The insidious nature of this tradeoff -- breaking down territorial rating pools into smaller and smaller units -- not only runs contrary to the essential concept of insurance in spreading risk, but also because geographic rating is based solely on loss cost experience of the insured vehicles in the territory, makes it impossible for good drivers to significantly benefit from their own responsible driving records. The upside, if we wish to seize it, is that the same technology (computers) that allows tracking information in smaller and smaller territorial units, also allows doing away with territories entirely, predicating premiums on individual experience. Indeed, this was the recommendation of a Joint White Paper of the Association of Insurance Brokers and the Auto Insurance Advocate Group back in 1989 -- expand territories into the metro-suburban areas to recognizing the spread of urban

density into these suburbs as well as relying more on technology to set premiums according to individual experience. Only in this way can Mayor Schmoke's plea to Governor Glendening and the Governor's charge to this Commission to seek an answer to lower auto insurance rates in Baltimore City be fairly addressed.

The chairman's report, however, citing political realities that would never allow enlargement of territorial rating pools into the surrounding political subdivisions of the City or force insurance companies to stop redlining inner-City neighborhoods, looks to reduce premiums by the simple expedient of reducing benefits and shifting costs.

The chairman's report recognizes the **smoke and mirrors** approach being taken to get the promised reductions in premiums, but justifies it on the basis that the consumers to be protected here are the ones paying the bills, not the few who may be injured and entitled to benefits sometime in the future. But even assuming this is a valid agreement, it does not justify limiting the search for cost reductions on the backs of consumers alone. Exhibit 2 to

this report shows that medical costs make up only 11% of our automobile insurance premium dollar, whereas property damage is 42% and the insurance industry's own administrative costs and expenses makes up 23% of the average premium. Neither were considered. Indeed, no one, except our Insurance Commissioner, is even allowed the proprietary information of the individual insurers that might be needed to determine whether there is any flexibility in those numbers.

But this is not about premium reductions for insurers, they have already expressed in writing their doubt as to the possibility of getting 20% in overall premium reductions out of the 11% medical costs component of the average automobile insurance premium dollar. This is about control. The insurers have complete control over the automobile repair business by shear force of numbers or volume of business. Business that is given is business that can be taken away. What they do not have and want, is that same type of control over health care providers. But that kind of one-sided control is incompatible with a civil justice system. That is why the industry

wants no-fault. In a first-party system, they control. They become the gatekeepers. If that happens, both consumers -- the ones paying the bills and the ones giving up the benefits they thought the system would provide for their injuries -- lose. In every state that has ever tried it, the average automobile insurance premium has always wound up being more than under the conventional fault or tort system.[5]

One final thought, having ignored the specific problems of Baltimore City and opted for a statewide approach; and even assuming the Commission's recommendations produce a 20% reduction in automobile insurance premiums throughout the State, does anyone really believe that after the dust settles and inflation has done its job, no one is going to notice that automobile insurance

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[5]Attached are two recent Wall Street Journal articles have been attached (Exhibits 3 and 4) to attest to the wisdom *vel non* of turning over control to insurers. In the first column is quoted as having "bet the farm" on tort reform only to discover that while automobile insurance premiums had risen an average of 8% per year nationally, they had risen 9.2% per year in Colorado. The other concerns a suit just filed in New York against Aetna by the medical doctors fired from the insurer's own HMO for refusing to allow Aetna to have the final say as to whether treatment is medically necessary and appropriate.

premiums in Baltimore City are still 3 and 4 times higher than in the rest of the State.

RECOMMENDATIONS:

A. Eliminate MAIF for standard risks.

MAIF has been the pressure relief valve that has allowed insurers to exclude undesirable neighborhoods. If as originally suggested, insurers were required to maintain market share within the City approximately equal to their overall market share within the State, they would be using every bit of the competitive ingenuity to seek and find the most desirable drivers within those same blighted inner-City areas they have ignored for years.

Technology today is such that the gathering of information on individual insureds is just as feasible as gathering it for large territories. Indeed loss costs which the industry admits is the only component in establishing territorial rates is just as easily determined by political subdivision, zip code or individual. The problem is that when those rating pools get too small both good and bad drivers suffer equally. And while MAIF's rates for non-

standard risks may even go up further due to the loss of those 3-year clean or standard risks the industry has forfeited, our purpose was not to alleviate the burden on bad drivers. To the degree we should, the elimination of mandatory coverages will assist even them. Insureds rejected by an insurance company must be given written notice as to the reason for the rejection. This rejection can be appealed to the Insurance Commissioner, since only the Maryland Insurance Administration can review underwriting guidelines.

B. Make full PIP mandatory; but for this coverage only, the geographic territory should be the entire State.

Since PIP makes up less than 10% of the total premium and there are 10 times the number of registered vehicles in the whole State versus Baltimore City, pooling loss cost statewide for this mandatory coverage only, would not have a significant upward effect on premiums while making them affordable for those poor inner-City residents who need it the most. These are precisely the families PIP benefits were intended to help. They have no health benefits

and marginal jobs at best with no paid sick leave. Until they can settle a third-party claim and/or just get back on their feet, PIP was intended to prevent these people from falling into the public health system and other public assistance programs at the taxpayers' expense.

c. Property damage liability should <u>not</u> be mandatory.

While there are significant public policy reasons for mandatory coverage with respect to personal injury claims, either first-party or third-party, there are no correspondingly compelling reasons to legally require automobile insurance for property damage. The property damage payments of private automobile insurance is 42% on average of our premium, and the minimum mandatory coverage for third-party liability protection is over 16% of that amount. In other words, it is more than 50% higher than the average premium for full PIP benefits. If mandatory coverages should be eliminated to make automobile insurance more affordable, property damage, not bodily injury mandated coverages, is where we should start.

D. In addition to the fraud provisions of H.B.923, the industry should subsidize a traffic investigative unit in each political subdivision.

Police departments used to investigate all traffic accidents within minutes of their occurrence and file a report which was usually accepted (absent extraordinary circumstances) by the parties and liability carrier as the definitive statement of fault. It also established a credible independent source as to the nature and extent of injuries. Nothing gets cases settled quicker, closes opportunities for fraud, and lessens the need for attorney involvement in the mind of the prospective claimant(s) than an official statement or report confirming responsibility for the accident. This in turn saves a considerable expense in the handling of claims which adds 23% on average to our automobile insurance premium.

E. Any person licensed by the State determined to have participated in a fraudulent claim and/or used unlawful means in the procuring or handling of such claims, should in addition to all other remedies available against them, lose their license to practice or otherwise do business within the State.

There is credible evidence supporting the view that licensed persons are not dealt with harshly enough by various licensing boards or associations having authority over them. There should be a law which clearly states that any finding of wrongful conduct in advancing insurance fraud by such licensed person mandates immediate rescission of that license.

TABLE 7: STATE RATIOS

1987 - 1992

STATE	1992 LOSS RATIO	1992 RANK	1992 STATE/ CW	1991 LOSS RATIO	1991 RANK	1991 STATE/ CW	1990 LOSS RATIO	1990 RANK	1990 STATE/ CW	1989 LOSS RATIO	1989 RANK	1989 STATE/ CW	1988 LOSS RATIO	1988 RANK	1988 STATE/ CW	1987 LOSS RATIO	1987 RANK	1987 STATE/ CW
Alabama	69.9	37	0.96	76.1	31	0.96	78.9	38	0.93	79.2	33	0.96	76.7	30	0.96	77.2	33	0.94
Alaska	68.0	44	0.93	82.0	16	1.03	82.6	27	0.98	70.8	49	0.85	66.8	51	0.83	65.6	51	0.80
Arizona	70.4	34	0.97	74.6	37	0.94	84.6	23	1.00	82.1	24	0.99	82.4	16	1.03	84.8	18	1.01
Arkansas	73.6	27	1.01	76.0	32	0.96	86.8	17	1.03	79.8	30	0.96	73.3	39	0.91	74.9	39	0.91
California	63.2	49	0.87	66.3	50	0.84	76.3	41	0.90	75.3	40	0.91	82.0	18	1.02	87.1	10	1.06
Colorado	72.7	29	1.00	85.9	10	1.08	93.8	9	1.11	89.9	12	1.08	81.2	19	1.01	83.4	20	1.01
Connecticut	77.3	12	1.06	85.3	12	1.08	86.2	18	1.02	86.7	13	1.05	87.9	7	1.09	84.8	17	1.03
Delaware	79.5	9	1.09	87.6	8	1.10	95.6	5	1.13	103.1	2	1.24	102.3	2	1.27	106.6	3	1.29
Dist. of Col.	73.1	28	1.00	81.8	17	1.03	81.9	30	0.97	85.1	15	1.03	74.0	35	0.92	79.2	27	0.96
Florida	70.7	33	0.97	72.6	41	0.92	71.2	50	0.84	72.0	47	0.87	73.7	38	0.92	77.4	31	0.94
Georgia	74.1	23	1.02	72.0	43	0.91	77.5	40	0.92	76.8	38	0.93	74.8	34	0.93	78.1	30	0.95
Hawaii	69.4	39	0.95	87.7	7	1.11	109.8	1	1.30	90.2	10	1.09	85.3	9	1.06	77.3	32	0.94
Idaho	70.2	36	0.96	76.5	30	0.96	81.9	29	0.97	72.1	46	0.87	73.2	40	0.91	71.8	45	0.87
Illinois	76.7	16	1.05	75.0	35	0.95	74.8	44	0.89	74.7	44	0.90	70.8	47	0.88	68.8	50	0.83
Indiana	72.6	30	1.00	77.6	27	0.98	80.1	35	0.95	85.7	14	1.03	75.7	32	0.94	83.8	19	1.02
Iowa	69.5	38	0.95	74.7	36	0.94	83.0	26	0.98	82.9	22	1.00	82.4	15	1.03	71.0	47	0.86
Kansas	76.4	18	1.05	74.0	39	0.93	75.1	43	0.89	75.1	41	0.91	70.9	45	0.88	71.3	46	0.86
Kentucky	77.0	14	1.06	83.2	15	1.05	93.5	10	1.11	89.9	11	1.08	86.9	8	1.08	80.2	24	0.97
Louisiana	70.4	35	0.97	79.6	23	1.00	85.9	19	1.02	82.1	23	0.99	75.5	33	0.94	87.0	12	1.05
Maine	62.0	50	0.85	67.9	48	0.86	74.5	45	0.88	81.6	25	0.98	82.3	17	1.02	87.1	11	1.06
Maryland	63.7	48	0.87	67.5	49	0.85	74.2	47	0.88	74.7	43	0.90	72.6	42	0.90	81.6	22	0.99
Massachusetts	68.9	41	0.95	80.8	21	1.02	87.5	15	1.04	84.8	16	1.02	82.7	14	1.03	85.9	15	1.04
Michigan	68.3	43	0.94	76.6	28	0.97	102.1	3	1.21	93.7	8	1.13	83.7	11	1.04	112.2	2	1.36
Minnesota	76.2	19	1.05	76.5	29	0.96	79.6	37	0.94	81.3	26	0.98	66.9	50	0.83	69.2	49	0.84
Mississippi	67.9	45	0.93	75.6	33	0.95	80.0	36	0.95	78.9	34	0.95	80.3	22	1.00	89.5	8	1.08
Missouri	72.0	31	0.99	75.3	34	0.95	80.6	33	0.96	77.2	37	0.93	73.7	37	0.92	70.8	48	0.86
Montana	76.6	17	1.05	72.1	42	0.91	73.2	49	0.87	66.9	51	0.81	68.4	49	0.85	74.0	42	0.90
Nebraska	74.3	22	1.02	81.7	19	1.03	81.2	32	0.96	79.7	31	0.96	80.0	23	1.00	76.4	35	0.93
Nevada	80.8	8	1.11	89.4	5	1.13	94.9	6	1.12	84.6	17	1.02	79.6	26	0.99	88.9	9	1.08

EXHIBIT

Table 7. STATE LIABILITY LOSS RATIO DATA FOR PRIVATE PASSENGER AUTO
1987 - 1992

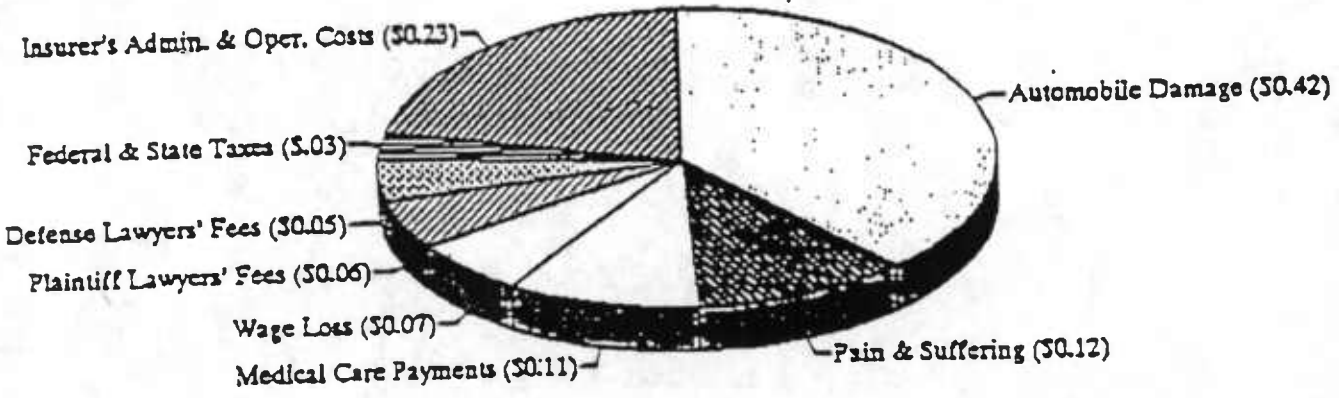
STATE	1992 LOSS RATIO	1992 RANK	1992 STATE/CW	1991 LOSS RATIO	1991 RANK	1991 STATE/CW	1990 LOSS RATIO	1990 RANK	1990 STATE/CW	1989 LOSS RATIO	1989 RANK	1989 STATE/CW	1988 LOSS RATIO	1988 RANK	1988 STATE/CW	1987 LOSS RATIO	1987 RANK	1987 STATE/CW
New Hampshire	67.0	47	0.92	79.6	22	1.00	90.5	13	1.07	96.5	6	1.16	94.0	4	1.17	96.7	4	1.17
New Jersey	87.7	3	1.20	100.8	2	1.27	97.2	4	1.15	111.3	1	1.34	136.6	1	1.70	145.1	1	1.76
New Mexico	81.4	6	1.12	84.8	14	1.07	94.0	7	1.11	99.2	4	1.20	99.2	3	1.24	94.6	6	1.15
New York	83.1	4	1.14	86.0	9	1.08	84.7	21	1.00	80.5	27	0.97	73.1	41	0.91	72.4	43	0.88
North Carolina	74.1	25	1.02	74.3	38	0.94	82.2	28	0.97	75.3	39	0.91	79.9	24	1.00	86.7	14	1.05
North Dakota	73.9	26	1.01	70.6	45	0.89	74.4	46	0.88	67.8	50	0.82	70.6	48	0.88	74.7	40	0.91
Ohio	67.7	46	0.93	69.0	47	0.87	78.3	39	0.93	77.2	36	0.93	77.9	28	0.97	79.9	25	0.97
Oklahoma	81.1	7	1.11	84.9	13	1.07	87.0	16	1.03	80.2	29	0.97	80.4	21	1.00	78.6	29	0.95
Oregon	60.5	51	0.83	60.8	51	0.77	68.8	51	0.82	74.9	42	0.90	74.0	36	0.92	74.4	41	0.90
Pennsylvania	78.3	11	1.07	78.2	25	0.99	81.5	31	0.97	95.4	7	1.15	91.2	6	1.14	94.0	7	1.14
Rhode Island	74.7	21	1.03	101.2	1	1.28	94.0	8	1.11	101.4	3	1.22	93.8	5	1.17	95.3	5	1.16
South Carolina	78.8	10	1.08	95.1	4	1.20	102.9	2	1.22	99.1	5	1.20	84.1	10	1.05	85.4	16	1.04
South Dakota	91.7	1	1.26	88.0	6	1.11	93.3	11	1.11	80.3	28	0.97	76.7	31	0.96	76.4	36	0.93
Tennessee	70.8	32	0.97	72.6	40	0.92	75.3	42	0.89	79.4	32	0.96	83.0	12	1.03	81.7	21	0.99
Texas	77.2	13	1.06	81.2	20	1.02	88.4	14	1.05	83.3	21	1.00	79.8	25	0.99	79.1	28	0.96
Utah	75.6	20	1.04	78.3	24	0.99	84.7	20	1.00	84.2	18	1.02	77.7	29	0.97	79.7	26	0.97
Vermont	81.9	5	1.12	85.6	11	1.08	84.6	22	1.00	92.8	9	1.12	82.7	13	1.03	87.0	13	1.05
Virginia	69.1	40	0.95	69.5	46	0.88	73.6	48	0.87	74.3	45	0.90	72.4	43	0.90	75.2	38	0.91
Washington	74.1	24	1.02	77.8	26	0.98	84.2	24	1.00	83.5	20	1.01	78.6	27	0.98	77.1	34	0.93
West Virginia	88.4	2	1.21	98.3	3	1.24	91.0	12	1.08	83.8	19	1.01	81.2	20	1.01	81.3	23	0.99
Wisconsin	68.4	42	0.94	71.6	44	0.90	80.6	34	0.95	78.1	35	0.94	72.3	44	0.90	71.9	44	0.87
Wyoming	76.8	15	1.05	81.7	18	1.03	84.2	25	1.00	71.7	48	0.86	70.8	46	0.88	75.6	37	0.92
COUNTRYWIDE	72.9			79.3			84.4			82.9			80.3			82.5		

SOURCE: National Association of Insurance Commissioners.

See Appendix, pages 216-227, for premium and loss data.

The Automobile Insurance Premium Dollar
1991

(Losses, other payments, and investment income total $1.09 for every dollar of premium taken in.)



Source: "Where the Premium Dollar Goes," Insurance Information Institute, 1990, Sean P. Mooney, Ph.D., CPCU, Senior Vice President & Economist and *The Fact Book 1993: Property/Casualty Insurance Facts*, Insurance Information Institute, from information compiled by A.M. Best Co., Inc.

EXHIBIT
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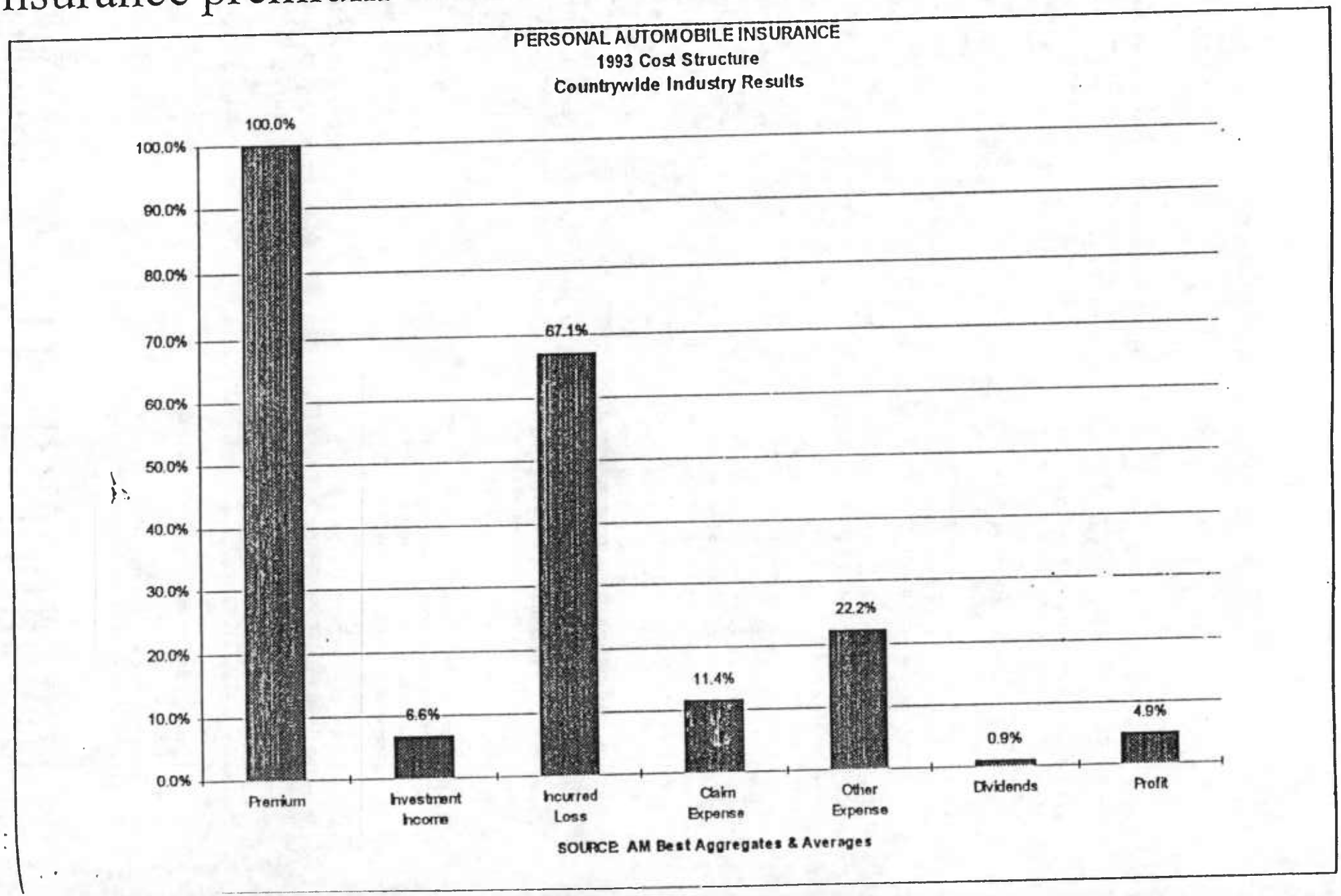
Claims and related expenses account for the vast majority of the insurance premium dollar



THE WALL STREET JOURNAL.

Tort Reform Test: Overhaul of Civil Law In Colorado Produces Quite Mixed Results

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Frivolous Litigants Win Less, But Some Real Victims Are Not Made Whole

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Insurers Who Left Return

By Milo Geyelin
Staff Reporter of The Wall Street Journal xx
03/03/92

WALL STREET JOURNAL (J), PAGE A1

DENVER -- Everyone talks about legal reform, but Colorado has bet the ranch on it.

State laws here protect ski resorts and dude ranches from lawsuits over accidental injuries. Bars are virtually immune from legal blame for the acts of drunk patrons. Jury awards for pain and suffering top out at $250,000. And defendants can't be forced to ante up more in damages just because they have the deepest pockets.

Some of Vice President Dan Quayle's most controversial proposals to overhaul the civil justice system have found a testing ground here. Shocked by soaring commercial and municipal insurance rates, Colorado began reforming its civil system six years ago. Though many states have enacted laws to limit civil suits and damage awards, none has done more than Colorado.

The idea was to make insurance more available, knock down premiums and give businesses a breather from costly litigation. More than that, reformers wanted to redress what they perceived as an injustice: the prevalence of unpredictable and often unjustified jury awards spurred on by avaricious lawyers working for contingency fees.

So what's the verdict? Insurance companies that fled Colorado in droves in the mid-1980s, blaming lawyers and high jury awards, have come back, bringing with them increased competition. Limits on damages have helped lower insurance companies' payouts, leading to some drops in insurance rates. Lawsuits of dubious merit are filed less frequently now because they are harder to prove. Defendants seem less inclined to settle out of court just to avoid the nuisance and risk of litigating.

But, to the dismay even of some reformers, that's not the entirestory. Commercial insurance premiums have gone down much less than the business community anticipated. Auto insurance, the major insurance cost for consumers, is actually more expensive than it was before the legal reforms were passed.But, to the dismay even of some reformers, that's not the entire story. Commercial insurance premiums have gone down much less than the business community anticipated. Auto insurance, the major insurance cost for consumers, is actually more expensive than it was before the legal reforms were passed.

Frivolous suits are less likely to reap big awards, but so are lawsuits that nearly anyone would consider valid. Cases involving catastrophic injury to the plaintiff and egregious wrongdoing by the defendant are highlighting the flip side of reform: The most seriously hurt are most likely to see their damages reduced the most under the new laws.

A propane gas explosion in the mountain resort of Crested Butte in March 1990 illustrates some of the unexpected problems with legal reform. Investigators found that the gas supplier, Salgas Inc., had violated more than a dozen state safety regulations. Three people were killed, and 14 were injured. One of the injured, Roxie Lypps, a former teacher and part-time bank employee, was buried beneath bricks and debris and had severe burns over 40% of her body. After two years of painful burn therapy and skin grafts, Ms. Lypps is still unable to work full time and faces an increased risk of skin cancer.

A Denver state court jury awarded Ms. Lypps $1.5 million last November. Of that amount, $486,000 was for punitive damages intended to punish Salgas and its parent, Empire Gas Co. of Lebanon, Mo., for negligence. The rest was compensation for injuries. But in December, a judge was forced to reduce the total amount by more than half. One reason: The jury's award of $600,000 for pain and suffering was over the state limit of $250,000.

That reduced Ms. Lypps's compensatory damages to $621,642. Then another Colorado law came into play:

Individual defendants in civil suits can't be forced to pay more than their share of the blame when others at fault have no money. In this case, Empire and Salgas blamed the blast on a repair two previous owners had made. The previous owners were out of business and uninsured. But the jurors weren't told this because another Colorado law prohibits lawyers from disclosing whether defendants have insurance. When the jury divided blame equally among all four companies, the net effect was to cut Ms. Lypps's remaining compensation to $310,822.

That, in turn, knocked down the punitive damages because Colorado law prohibits juries from assessing more in damages to punish wrongdoers than they award to compensate victims. Ultimately, Ms. Lypps expects to receive a total of about $316,000 after all her legal fees and other expenses are deducted.

"I'm well beyond {concern over} the money," says Ms. Lypps, 47 years old. "But the court system should allow the jury to award what they feel is fair. . . . To me it's totally unfair. We end up being the victims again." In cases of serious injuries such as hers, what remains may not be enough to pay for medical care and rehabilitation. Because defendants and their insurers are now insulated from huge damages, costs are transferred to state and federally funded health programs when victims' insurance limits run out.

In Longmont, Colo., seven-year-old Leah Speaks has been in a permanent coma since last May, when her mother was killed and her sister badly injured by an uninsured drunk driver coming from a bar. The driver had knocked back five beers and six whiskey shots, enough in many states to have the bar held legally responsible for the accident.

But in Colorado, damages against bars that serve customers to drink are limited to $150,000 and apply only if the bartender acted willfully. The bar in this case settled out of court for the full amount. But it was hardly enough to pay for a lifetime of medical and nursing care. Federal Medicaid and disability payments are already footing the bill, says Leah's aunt and guardian, Roberta Gies.

Leah Speaks and Roxie Lypps weren't the kind of victims legal-reform advocates had in mind when they began overhauling the state's civil justice system in 1986. The reformers were aiming at cases such as the one involving Oscar Whitlock, a University of Denver student who became paralyzed in a trampoline accident during a fraternity party.

Mr. Whitlock blamed the university for not supervising the fraternity, and in 1985 an appeals court upheld a jury award of $5.3 million. Though ultimately overturned, decisions like this offended basic beliefs here that individuals must bear responsibility fortheir own risks.

Such multimillion-dollar jury awards for seemingly meritless lawsuits also were being blamed for Colorado's deepening insurance crisis. Insurers said they could no longer accurately predict risk. Throughout the state, thousands of commercial and municipal liability policies suddenly were canceled in 1985. Rates and deductibles were soaring for other businesses and professions, while coverage declined. Rural physicians stopped delivering babies when rates for doctors who performed obstetric procedures doubled.

Dude ranches accustomed to paying $20 a year per horse for liability coverage were suddenly paying $400. Bars and restaurants saw rate increases of 600%. "A lot of my friends went bare," says John Ziegler, owner of Jackson's Hole SportsGrill in Denver.

Nearly half of Colorado's municipalities had their policies canceled or faced major restrictions. Even cities with excellent risk records felt the brunt. "Basically, there was no reason," says Darrell Barnes, risk manager for Colorado Springs, which had its $5 million liability policy canceled in September 1985.. "Our claims never exceeded our premiums."

The problem was national, but Colorado seemed particularly hart hit. Some carriers, blaming lawyers, pulled out of the state altogether. Business groups and insurers banded together to urge reform. "If someone breaks into your house," Aetna Life & Casualty Co. warned in a full-page ad in Denver's Rocky Mountain News, "better hope they don't break a leg, Lawsuit abuse is out of control.

The extent to which lawsuits actually were to blame remains in dispute. Some state officials question whether there really was an insurance crisis. Colorado is among 18 states that filed an antitrust suit in 1988 against more than two dozen insurers. The suit alleged an industry conspiracy to pull out of the commercial and municipal liability market to limit exposure after years of risky underwriting.

Insurance companies deny the charges and are vigorously contesting the suit. But former Colorado insurance commissioner John Kezer says that at least part of the industry's crisis was self-inflicted. For years, insurers had been underpricing policies and "low-balling" risk to grab premium dollars and invest at record-high interest rates, he says. When those rates tumbled in 1985, the industry's cash surplus shrank. A nationwide contraction in insurance availability ensued, coinciding with a rise in claims.

Unpredictable jury awards exacerbated the problem, increasing pressure on defendants to settle cases, says

former University of Denver law school dean Edward A. Dauer, chairman of a task force that investigated the crisis. Colorado was not experiencing a "litigation explosion," he says, but the insurance industry "needed predictability in risk."

Legal reform became the clarion call, and Colorado's conservative, business-oriented legislature swiftly embraced it. Legislators enacted 68 laws over six years.

Lawyers became more reluctant to bring difficult-to-prove cases. Juries and judges became more skeptical of injury claims and angry about lawsuit abuse. "Juries who sit on auto-accident cases see themselves as more likely the victim of a lawsuit than the victim of an accident," says William Keating, a Denver plaintiffs' lawyer.

Injury cases, as a result, have become more expensive to pursue and difficult to prove, says another plaintiffs' lawyer, Gerald McDermott. "That in and of itself is going to result in some cases that have some merit not being pursued," he argues. For cases involving less than catastrophic injuries, jury verdicts and settlements have dropped.

The laws have most directly helped professions and businesses that were singled out for special protection. Malpractice rates at physician-owned COPIC Insurance Co., Colorado's largest medical malpractice insurer, have dropped 17% since 1988, the year Colorado overhauled its malpractice law to limit liability and damages for doctors.

But, in general, the overall impact on the insurance policyholder has not been great. The insurers have benefited more than individual consumers. Industry losses over the past six years have fallen 30%, while general commercial liability premiums have dropped only 9% overall, according to A.M. Best Co., an independent data gatherer.

At Breiner Construction Co., a small contractor in Denver, commercial liability rates dropped 15% in 1990 -- the first drop after six years of increases. "It has come down," says Breiner's president, Rosemary Breiner, "but not as much as it went up."

State regulators haven't been able to determine the impact that legal reform has had on lowering insurance rates because commercial insurers don't have to reveal this information in public disclosures. Moreover, Colorado has benefited from an upswing nationally in the insurance industry's business cycle. That alone was largely responsible for bringing back insurers to the state, regulators say.

Meanwhile, automobile insurance rates, a major bone of contention with Colorado residents, have continued to rise steadily. Between 1988 and 1990, rates rose 8% on the average, nationwide. But in Colorado, they rose 9.2% in the same period. "That's what's creating some animosity on the part of myself and some others," grouses Assistant Senate Majority Leader Ray Powers, a conservative Republican who, like some other powerful legislators, is having second thoughts about continued reform efforts.

Highly publicized accidents such as the one at Crested Butte and another at Berthoud Pass, near Denver, are contributing to legislators' caution. In the Berthoud Pass incident, a state road worker clearing fallen rocks from the pass shoved a 6.7-ton boulder down the mountain in 1987, thinking it would roll just a few feet. The rock crashed into a tour bus 725 feet below, killing eight and injuring 25.

One tourist, Marcus Lang, who was blinded and brain-damaged, lingered in Denver General Hospital for almost a year before he went home to West Germany and died. Under Colorado's governmental immunity law, toughened in 1986 and upheld by the Colorado Supreme Court last month, the state's total liability for all the victims combined couldn't exceed $400,000. Mr. Lang's medical bills alone exceeded $328,000. (Mr. Lang's estate hasn't received anything as yet from Colorado because the case is still being litigated.)

Many Colorado residents were appalled. "I think we did need legal reform, but now the pendulum has begun to swing back, so the person who needs compensation can get it," says Republican House Majority Leader Scott McInnis, an early reform supporter who now is backing off.

One bill he is backing this year would increase the potential liability of government entities. Another would create an office of consumer advocate to more aggressively hallenge insurance-industry rate requests. Continued legal reform also now faces a more skeptical legislature, says Republican House Speaker Chuck Berry.

Opposition is stiff for a bill the river rafting industry is pushing to protect itself against suits stemming from whitewater accidents, including "getting lost or failing to return." There is also little enthusiasm for a law auto insurers are pushing to reduce the minimum insurance coverage required in Colorado. Auto insurers are also promoting a companion bill to limit accident victims' ability to sue over injuries.

Two years ago, identical auto-insurance proposals were under debate when Dorothy Powers, the wife of the assistant Senate majority leader, showed up in the state capitol to lobby in opposition. Encased in a body cast to fuse her own fractured spine from an auto accident, Mrs.

Powers, 60 years old, sat before a hearing committee and held up her hospital X-rays. "I never thought that this could happen to me," she said. "Now I know it can happen to any one of you, to anyone in this room, at any given time."

Not surprisingly, says Mr. McInnis, both bills died. "This was closer to home," he says, "Everybody on that committee knew her."

(See related letter: "Letters to the Editor: Undoing Tort Reform Punishes the Innocent" -- WSJ April 21, 1992)

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Doctors Sue Aetna Over HMO Dispute

NEW YORK (AP) – A group of hospital anesthesiologists filed a lawsuit against Aetna Life and Casualty Insurance Co. yesterday, alleging that Aetna threatened to get them fired if they didn't agree to give up final say on patient care.

The federal-court suit says that when the doctors attempted to negotiate changes in their agreements with Aetna's health-maintenance organization, Aetna threatened to stop doing business with the hospitals where the anesthesiologists worked, thus putting their jobs in jeopardy.

The doctors claim the practice violates antitrust laws and is detrimental to the care of patients enrolled in Aetna's New York HMO.

Yesterday's suit, filed in U.S. District Court in New York, was filed on behalf of 20 anesthesiologists at hospitals on suburban Long Island that negotiated contracts with Aetna Health Plans of New York Inc.

The suit seeks an injunction and compensatory damages.

Aetna denied the charges.

"There is absolutely no merit to the charges alleged in this suit," said Sal Foti, an Aetna spokesman.

EXHIBIT

4

submitted 9.1.95

CITIZEN ACTION'S SUPPLEMENTARY COMMENTS ON THE PRELIMINARY REPORT OF THE GOVERNOR'S COMMISSION ON BALTIMORE CITY AUTOMOBILE INSURANCE RATE REDUCTION

con·sen·sus \ken-'sen(t)-ses\ *n* [L, fr. *consensus*, *pp.* of *consentire*] 1 : group solidarity in sentiment and belief 2 **a** : general agreement : UNANIMITY **b** : the judgment arrived at by most of those concerned

Due to the inclusion of a number of recommendations which Citizen Action views as anti-consumer, we do not offer our support for the full report. The term "consensus" does not apply to the *Preliminary Report of the Governor's Commission on Baltimore City Automobile Insurance Rate Reduction*. In fact, use of this term to describe the Commission's report is misleading and misrepresents the nature of the Commission proceedings and of the process by which the report was created. Although no vote was taken by the Chairman, it was clear that unanimity or "consensus" did not exist. There was no "group solidarity in sentiment and belief nor was there a "judgment arrived at by most of those concerned."

Citizen Action supports recommendations to regulate territorial rating practices in order to eliminate the unfair and disproportionate economic impact that current practices have upon the African American and low income communities in Baltimore City. With the exception of this recommendation, insurance industry market practices were not addressed. We feel that this limited the effectiveness of the Commission and set an anti-consumer tone which we strongly oppose. If a vote were taken on this report, Citizen Action would offer a "nay."

Citizen Action agrees with the author of the report that "there is no room in the system for fraud." We strongly support reducing insurance fraud whether it is performed by claimants, doctors, lawyers or insurance industry employees. On the other hand, we oppose reducing or denying consumers benefits in order to reduce premiums, and we oppose recommendations which would shift costs to health insurance. In addition, we oppose recommendations which would allow insurers to collect premiums without having to pay full benefits.

According to the National Association of Insurance Commissioners December 1993 *Auto Insurance Database Report*, Maryland auto insurance companies enjoyed a 1992 statewide liability loss ratio of 63.7 for private passenger auto insurance ranking 48th in the country. This places Maryland well below the 1992 countrywide average of 72.9 (Table 7, pp14-15). Only two other states pay out less of their premium dollars to claimants than does Maryland. The same report shows that the liability loss ration for Maryland actually dropped from 81.6 with a ranking of 22nd in 1987 to the 1992 loss ratio cited above.

In 1987 Maryland insurance companies paid out nearly 82 cents for every premium dollar collected. In 1992 that number fell to nearly 64 cents. Either insurance companies have become grossly inefficient, wasting the premiums they collect, or they have become amazingly profitable.

Obviously, the insurance industry in Maryland has managed not only to decrease its liability loss ratio, but to spend out less and less of the premium dollar to consumers over the 6 years for which data is available. Yet, the Chairman of this commission chose "to make(s) no additional recommendation regarding market reform." This limited the commission to three areas (1) reducing fraud (2) reducing "underlying loss costs" and (3) reducing benefits to consumers.

Multiple Recoveries

Citizen Action opposes commission recommendations to eliminate multiple recoveries. These recommendations lower costs to the insurance industry by allowing them to collect premiums without having to pay full benefits to consumers. Recommendation 1.a. will shift expenses onto Maryland's health care system and ultimately raise health insurance rates for this already costly coverage. Any recommendation which shifts costs from auto insurance to health insurance will ultimately cost health care consumers more - this includes those who are good drivers and bad drivers, those in the city and in the suburbs.

Managed Care

Citizen Action opposes recommendation 2.a. This recommendation, if enacted, would have a negative impact on consumers in 2 ways: (1) it will take away health care choice from consumers and (2) it will create a conflict of interest.

Consumers will not be able to choose their own doctor. Rather, their choice of doctors will be limited to what their auto insurance company feels is appropriate -- even if they are currently under the special care of another physician.

The conflict of interest is clear. Auto insurance companies will make more money when they deny health care. Under this scenario, the company which provides a person's auto insurance will have a vested interest in limiting the quantity and quality of health care consumers receive if they are injured in an auto accident.

Under this scenario consumers are put in an extremely precarious position if they have been treated inadequately or unfairly. The remedy in such situations is unclear but will surely favor the auto insurance company. For example, what would be the grievance procedure under such a system? It is likely that the Auto Insurance-Managed Care Doctor would serve as a witness on behalf of the

injured party in such a situation. This is clearly a conflict of interest and dangerous for the consumer.

Medicare Proposals

Citizen Action opposes recommendation 2.b.i. which imposes a Medicare fee schedule on health care providers for soft tissue injuries and 2.b.ii which would limit the amount for which third-party defendants are liable for medical costs for soft-tissue injuries to the amount reimbursed by Medicare.

Congress is currently proposing a $270 billion dollar cut to the Medicare program. No one knows what the future holds for this program, therefore it is unwise to base any recommendation on Medicare.

In addition, Maryland already has undertaken a great deal of health care reform in HB 1359. This legislation includes the provision to develop a resource based, relative value scale doctor fee schedule that is determined on a provider basis. HB 1359 also includes a provision for an electronic claims data reporting program so that the type of care, by provider, can be tracked. Imposing a new payment plan on some providers, while developing a universal one that makes sense for all health care consumers is unwise and will create unneeded confusion.

Fraud

Once again, Citizen Action agrees with the author of the report that "there is no room for fraud in the system." Individuals found guilty of committing fraud should be prosecuted to the fullest extent of the law. This includes claimants, health care providers, lawyers and insurance industry employees and believe that such In this spirit, we support recommendation 3.b. which will create an accident reporting unit paid for by the insurance industry and recommendations 3.c.i., 3.c.ii and 3.c.iii which deal with licensing boards. Any professional found guilty of committing fraud should have their license revoked. In addition, we support recommendation 3.d. which will prevent "runners" from receiving compensation for directing or referring auto accident victims to an attorney or health care provider.

While Citizen Action supports efforts to reduce fraud, we do not support limiting benefits to all auto insurance consumers to achieve such a reduction. Recommendation 3.a. which requires physical evidence of contact punishes both good drivers and bad and therefore we cannot support it. We also oppose recommendation 3.e.ii. which would result in the punishment of the injured party not the individual who actually committed fraud. This is blatantly unfair.

Territorial Rating

Citizen Action views territorial rating as unfair and discriminatory and would like to see this practice eliminated all together. Yet, we realize the political context within which we operate. Therefore, we strongly support recommendations to regulate territorial rating practices in order to eliminate the unfair and disproportionate economic impact of such practices upon the African American and low income communities in Baltimore City.

Reducing Accidents

As to recommendation 6., we do not feel that adequate data was provided to show that these recommendations would indeed reduce auto insurance premiums in Baltimore City. We therefore withhold our support.

USF&G

James R. Lewis
Senior Vice President
Family and Business Insurance Group

August 31, 1995

David M. Funk, Esquire
Chairman
Governor's Commission on Automobile Insurance
Shapiro and Olander
Twentieth Floor
36 South Charles Street
Baltimore, Maryland 21201-3147

Re: Objections to Recommendations Contained in the Preliminary Report of the Governor's Commission on Automobile Insurance

Dear David:

As a member of the Governor's Commission, individually, and on behalf of USF&G and the insurance industry, I am compelled to object to several of the Recommendations contained in the Preliminary Report of the Governor's Commission on Automobile Insurance for the reasons set forth below.

Recommendation 5, relating to "regulation of territorial rating practices", is too broad and as such is not supported by the evidence. It goes beyond the charge given to the Governor's Commission to seek ways to reduce rates in Baltimore City, and the implied charge to enhance competition in Baltimore City, which was a major goal of 1995 House Bill 923. Therefore, it should be more limited in its application.

Recommendation 5(a) in unnecessary. The Maryland Insurance Commissioner, in his prior approval review of every automobile insurance rate filing, determines whether or not the underlying risk considerations, which support the rates and the rating territories used, are actuarially-justified. He is required to do so by law, and Commissioner Bartlett stated at the August 28, 1995 meeting of the Commission, that he does so. Other than the complaint of one witness that "underlying risk considerations" should be defined by the Commissioner, the evidence

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does not suggest that a definition of this term is required or needed. In the alternative, if the Legislature wishes to elaborate and expand upon the statutory relationship between geographic territories and underlying risk considerations, it should be the body to do so; not the Insurance Commissioner. Therefore, Recommendation 5(a) should be deleted, or in the alternative, directed towards the General Assembly.

Recommendation 5(b) should be amended to reflect existing law and existing powers of the Maryland Insurance Commissioner and generally limited in scope. As you are aware, Part 2, Section A of the Preliminary Report states, at page 63, that "the Commission received no credible evidence that automobile insurance rates are excessively high in Baltimore City because of overt race discrimination by the insurance industry". The reason for this statement is simple. The use of race by insurers in underwriting (which includes setting rates and establishing rating territories) is expressly prohibited by the *Maryland Insurance Code*.

During the testimony taken by the Commission, only one witness made the allegation that race is used in establishing rating territories and that there was a correlation between race and rating territories. While such blatant violations of the *Insurance Code* are difficult to imagine because of the express prohibition to the use of race, it is appropriate to assure that such a correlation does not exist. The Maryland Insurance Administration, under existing law, has the power to investigate whether or not race is used as a factor in establishing rating territories, and whether or not race is a component used in the rating of automobile insurance policies. If the Maryland Insurance Administration determines that this is the case, then the Maryland Insurance Administration should prosecute the offending companies for violations of the *Insurance Code*. Recommendation 5(b)(i) encompasses these powers and is appropriate.

Recommendation 5(b)(ii), however, goes beyond the prosecution of such offensive behavior. Recommendation 5 (b)(ii) directs the Insurance Commissioner to "ameliorate the impact of territorial rating practices on African-Americans in Baltimore City" if he finds that there is a relationship between the racial composition of the territories and rates. This recommendation does not call for prosecution, but rather, some other action to address the territorial rating practices. Redrawing, redefining or ameliorating territorial rating practices is synonymous with providing for some sort of subsidy to the affected class. This is inappropriate and should not be recommended by the Commission.

More importantly, Recommendation 5(b)(ii) appears to contravene existing Maryland law. As stated earlier, Maryland law prohibits the use of race in ratemaking and prohibits any inquiry as to race, creed, color, or national origin by an insurer on any insurance form or in the application process. This assures that the rating process used by insurers is "blind" to race. Recommendation 5(b)(ii), absent some creative recordkeeping methods, will introduce race, and, specifically, a bias in favor of African-Americans, into Maryland's rating law. It will

require some tracking of African-Americans by insurers to assure that adverse effects can be ameliorated. This is inappropriate, and if done by regulation, would force the Commissioner to contravene the *Insurance Code*. For this reason alone, Recommendation 5(b)(ii) should be deleted. In addition, Recommendation 5(b)(ii) violates the spirit of the statements made by Governor Glendening and Mayor Schmoke at the initial meeting of the Governor's Commission that they were opposed to any recommendation or program which would provide a subsidy to Baltimore City.

It must also be noted that at the August 28, 1995 meeting of the Governor's Commission, at which these recommendations were discussed, that the three African-American members of the Commission who were present objected to any reference in Recommendation 5 to race and/or to specifically highlighting African-Americans. While Messrs. Gill and Lambert wanted a recommendation that addressed territorial rating in some way, they joined me in opposing the introduction of a reference to race or African-Americans into the Recommendation. Unfortunately, the Commission chose not to accept this request from these three members.

Lastly, the reference in Recommendation 5(b)(ii) to special treatment of African-Americans in any amelioration of rating territories, provides a bias against other minorities and all other insureds. This is also inappropriate.

For all of the above reasons, Recommendation 5 should be significantly re-worked to only require that the Maryland Insurance Administration investigate whether or not race is used in the establishment of rates and rating territories; and if so, the Maryland Insurance Administration should be directed to use all of its powers to eliminate this violation of the *Insurance Code*.

I also want to comment briefly on two other points. Recommendation 3(b) should not be funded by the insurance industry. The insurance industry provides support for the Fraud Unit through increased fees, and also pays millions of dollars in premium taxes to the State of Maryland. Any pilot program should be funded with State funds, after careful consideration of the cost-effectiveness and overall propriety of such a program, giving due consideration to the veracity and value of such reports. Also it would be inappropriate for such investigators to assess liability, as one member of the Commission envisioned their role.

Lastly, while the goal of the Commission to reduce rates in Baltimore City by 20% is laudable, I am not sure that our Recommendations reach this target. I do believe that an effective no-fault bill or an effective choice no-fault bill, receiving the full support of the Governor, would be the most effective way to reduce rates. While political opposition from certain parties may detract from the value of such a program if the sponsors allow it to be

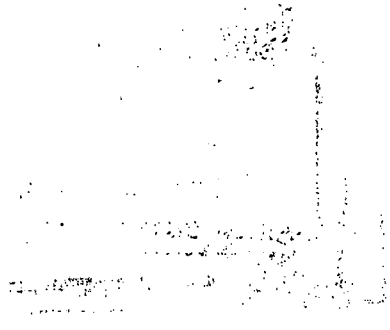
compromised, an uncompromised bill is probably the fairest and most effective way to reduce automobile rates. Therefore, the Commission should recommend that the General Assembly and/or the Governor's Office consider no-fault, and let them decide if there is appropriate political wherewithal to pass such legislation intact.

Once again, I would like to thank you for the opportunity to participate in the Commission and to file these comments.

Sincerely yours,

James R. Lewis
Senior Vice President
Member of the Governor's Commission on
Automobile Insurance

JRL/sgw



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